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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/705,152	11/02/2000	Martin Hering	17857.4	4568
7590	01/23/2004		EXAMINER	
Carl M Napolitano Ph D ALLEN DYER DOPPELT MILBRATH & GILCHRIST P A P O Box 3791 Orlando, FL 32802-3791			STRIMBU, GREGORY J	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/705,152	HERING, MARTIN
	Examiner Gregory J. Strimbu	Art Unit 3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12/12/03.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 62,64-66 and 86-90 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 62,64-66 and 86-90 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

***Specification***

The abstract of the disclosure is objected to because "removable" is grammatically awkward and confusing. It is suggested that the applicant change "removable" to --removably-- to avoid confusion. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 62, 64-66 and 86-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison et al. Harrison et al. discloses a turnstile (not generally numbered, but seen in figure 1) defining a passageway (not shown, but see lines 1-19 of column 1), the turnstile having an arm 3 movable into the passageway for blocking passage of a person therethrough, the arm movable out of the passageway for permitting passage therethrough, the arm having an outside surface (not numbered, but best seen in figure 5), a sleeve 27 easily slidable onto and off the arm, indicia 30 carried by the sleeve, wherein the indicia is positioned for viewing by the person passing through the passageway when the arm is positioned therein, a collar 28, each of the arms carries different indicia as shown in figure 2. Harrison et al. is silent concerning

the arm having a generally circular outside surface in cross section and the sleeve encircling a substantial portion of the arm.

However, Nica discloses a turnstile comprising arms 18 each having a generally circular outside surface in cross section and sleeves 68 encircling a substantial portion of the arm outside surface defined by the generally circular cross section.

It would have been obvious to one of ordinary skill in the art to provide Harrison et al. with tubular arms and tubular sleeves, as taught by Nica, to improve the aesthetic appearance of the turnstile.

Additionally, the manufacture of the apparatus disclosed by Harrison et al. in view of Nica would inherently lead to the method steps recited in claims 62-85.

### ***Response to Arguments***

Applicant's arguments filed December 12, 2003 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). It is well known in the art to provide turnstiles with generally cylindrically shaped arms to give the turnstile an aesthetically appealing appearance and to reduce the amount of injuries/discomfort to people using the turnstile. Merely "updating" the old

turnstile construction of Harrison et al. is well within the grasp of one with ordinary skill in the art.

The applicant's assertion that each element of the claimed invention has not been found is not persuasive because every element of the invention has been "found" as set forth in the rejection above. Harrison et al. discloses a transparent sleeve 27 and a collar 28, a sheet 30 with indicia.

Finally, the applicant's "evidence" of success is not persuasive. Establishing a long felt need requires objective evidence that an art recognized problem existed in the art for a long period of time without solution. Thus, the need must have been a persistent one that was recognized by those of ordinary skill in the art. See *In re Gershon*, 372 F.2d 535, 539, 152 USPQ 602, 605 (CCPA 1967). The declaration of Martin Hering and the exhibits A-Q fail to provide any evidence that an art recognized problem existed in the art for a long period of time without solution. While fulfillment of a long felt need is some evidence of non-obviousness, it is not necessarily conclusive evidence. See *Leinoff v. Louis Milona & Sons, Inc.*, 726 F.2d 734, 220 USPQ 845 (Fed. Cir. 1984). Finally, it should be noted that none of the evidence presented by the applicant addresses the combination of the teachings of Harrison et al. and Nica.

### ***Conclusion***

**THIS ACTION IS NOT MADE FINAL.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.



Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
January 22, 2004